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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/681,212 | 10/09/2003 | Shigenori Watari | | 8332 |
| 24956 | 7590 | 07/17/2008 | | |
| MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. | | | EXAMINER | |
| 1800 DIAGONAL ROAD | | | GORDON, BRIAN R | |
| SUITE 370 | | | | |
| ALEXANDRIA, VA 22314 | | | ART UNIT | PAPER NUMBER |
| | | | 1797 | |
| | | | | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 07/17/2008 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|---|------------------------|---------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) | |
| | 10/681,212 | WATARI ET AL. | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

- 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5. Applicant's reply has overcome the following rejection(s): _____.
- 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 7-16.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

- 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

- 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
- 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 10-9-03
- 13. Other: _____.

/Brian R Gordon/
Primary Examiner, Art Unit 1797

Continuation of 3. NOTE: Applicant has amended the claims in a manner which now makes the scope of the claims broader than what was previously examined. The device claimed no longer positively claims a reaction vessel. As such the reaction vessel is no longer required to be present in the device. Applicant has amended the claim such that the reaction vessel is mentioned in the preamble of the claim. The preamble of the claim is not further structurally limiting of the analyzing the analyzing apparatus. The reaction vessel is mentioned in the narrative as a device which applicant desires or intends for the the analyzing apparatus to used with. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. It should further be noted that the preamble of the claim recites a specimen is poured into the reaction vessel. The specimen is not positively claimed as an element of the analyzing an apparatus. Furthermore the manner in which the specimen is placed in the reaction vessel is directed to a process limitation. Applicant has also deleted the control means dependence on "physical properties of the components of the specimen". It should be noted applicant appears for the control means to limited on a relationship of its intended use with the unclaimed reaction vessel and specimen. The analyzing apparatus is not interpreted to be further structural limited on how the device is intended be used with unclaimed elements. If applicant intends for the device to limited on such interaction then the reaction vessel and specimen should be positively claimed as elements of the analyzing apparatus. Applicant has replaced the recognized means plus function language of "means for" with "means to". It is unclear if applicant intends to invoke 112 Sixth Paragraph. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.